

The Honorable Whitman L. Holt
Chapter: 11
Hearing Date: August 21, 2024
Hearing Time: 10:30 a.m.
Hearing Location: Telephonic
Response Date: August 16, 2024

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

In Re:

iCAP ENTERPRISES, INC.,

Debtor.

CASE NO. 23-01243-WLH11

REDMOND FUNDING GROUP,
LLC'S OBJECTION TO DEBTORS'
DISCLOSURE STATEMENT

COMES NOW Redmond Funding Group, LLC ("**Redmond Funding**"), a secured creditor, by and through its attorney, Darren R. Krattli of Eisenhower Carlson PLLC, and files this objection to Debtors' Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting procedures; (III) Notice and Objection Procedures for Confirmation of Joint Plan of Liquidation; and (IV) Granted Related Relief¹ (the "**Motion**"). Redmond Funding objects to (i) deliberate obfuscation of Debtors' claims against creditors, (ii) the treatment of secured claims as unimpaired, and (iii) the scheduling of the confirmation hearing.

I. DISCUSSION

A. Failure to Disclose Known iCap Trust Actions with the Disclosure Statement

The ongoing pattern in this case is the Debtors' seemingly deliberate attempts to obfuscate the targets of its intended avoidance actions. This issue was raised by several

¹ Dkt. no. 1142.

1 creditors during the prior hearings related to Debtors' March 2024 motion for post-petition
2 financing.² Five months after those arguments, the pattern continues with Debtors' proposed
3 Disclosure Statement,³ which still fails to identify those actions. The Disclosure Statement
4 provides that the Debtors will supplement their disclosures just seven days prior to the voting
5 deadline, and that the Plan Supplement will only be made available in an online database
6 (rather than affirmatively mailed to interested parties like the Disclosure Statement).⁴ The
7 Plan Supplement will include the "iCap Trust Actions",⁵ which are the Debtors' list of
8 potential claims against claim holders.⁶ In other words, the Disclosure Statement is warning
9 claim holders (buried on page 87) that some claims may not actually be allowed or paid, but
10 which claims are potential targets will not be identified until just seven days prior to the
11 voting deadline and only if the claim holders search out a website to find the list.

12 Betraying the Debtors' intentions, the seven-day disclosure deadline for the Plan
13 Supplement appears entirely artificial. The Disclosure Statement was filed on July 16, 2024,
14 just prior to a scheduled hearing on July 17, 2024. At that hearing, counsel for Debtors
15 requested a confirmation hearing and effective date in mid-September. To hold a
16 confirmation hearing in mid-September, it would require the issuance of the court approved
17 Disclosure Statement to interested parties in mid-August 2024.⁷ However, due to the Court's
18 unavailability, the confirmation hearing may not be held until later in September or even
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20 ² See dkt. no. 624, pp. 6-7 ("By avoiding the disclosure of likely targets of future adversary
21 actions, Debtors are discouraging full and vigorous defenses to their request for relief.").

22 ³ Dkt. no. 1088.

23 ⁴ *Id.*, p. 9, ll. 9-13.

24 ⁵ *Id.*, p. 87-88 ("...Plan Proponents note that all parties in interest should review the
25 Plan Supplement, which will include a non-exclusive listing of the iCap Trust
26 Actions that are being preserved under the Plan.").

⁶ *Id.*

⁷ See dkt. no. 1142, p. 9-10 (timeline for confirmation assuming disclosure statement is
approved August 21, 2024).

1 October, and the hearing on the Disclosure Statement was scheduled for August 21, 2024.
2 Following that scheduling discussion, Debtors filed their Motion, which includes a proposed
3 confirmation schedule. That schedule provides a voting deadline of September 13, 2024,⁸
4 which in turn makes the “Plan Supplement” due no later than September 6, 2024, just 16
5 days after the hearing on the Disclosure Statement.

6 If the iCap Trust Actions will finally be disclosed on September 6, 2024 (and
7 assuming in good faith that the Debtors do not already have that list prepared and available to
8 disclose immediately), why are the Debtors rushing the hearing on and issuance of the
9 Disclosure Statement? Couldn’t the Debtors delay the hearing just two and a half weeks to
10 allow parties to review the Plan Supplement in conjunction with the Disclosure Statement?⁹
11 The only reason not to is to discourage claim holders from seeing the list and/or filing
12 objections based on its contents.

13 What makes this strategy even more problematic is that the Debtors are asking the
14 Court to approve a Disclosure Statement that is missing such key information, with the
15 promise that something will be provided later. Neither the Court nor interested parties have
16 any idea of what form the Plan Supplement will take. In its most egregious form, would the
17 Debtors just provide a generic list of all parties dealing with the Debtors in any fashion pre-
18 petition, and then state that there could be claims against one or more of those parties?
19 Would that be sufficient disclosure?

20 A debtor’s disclosure statement must provide “adequate information” to enable
21 creditors to make informed judgments about the plan.¹⁰ To be “adequate” the disclosure
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23 ⁸ *Id.*

24 ⁹ Especially as the Debtors have yet to produce their liquidation analysis. The hearing on the
25 Disclosure Statement could have been delayed until both the iCap Trust Actions and the
26 Liquidation Analysis were complete. Dkt. no. 1142, p. 14 (“The Plan Proponents intend to
file this liquidation analysis prior to the hearing to consider this Motion”).

¹⁰ 11 U.S.C. § 1125(b).

1 must provide information of a kind, and in sufficient detail, as far as is reasonably practicable
2 in the light of the nature and history of the debtor, to enable creditors to make an informed
3 judgment on the plan.¹¹ The determination of whether a disclosure statement contains
4 adequate information is to be made on a case-by-case basis, focusing on the unique facts and
5 circumstances of each case.¹² The Debtors' plan intends to be funded almost entirely through
6 the iCap Trust Actions. There is no more material issue than what those actions are, who the
7 targets are, and how those claims will affect their interests. As such, Redmond Funding
8 respectfully requests the Disclosure Statement be rejected until it is amended to include the
9 full iCap Trust Actions list, to include details of the intended claims and the estimated
10 amounts of those claims. The Debtors have hid behind the complexity of the financial
11 records for nearly a year now. It is time for them to finally disclose their intentions for
12 funding the plan and their valuation of those claims.

13 While the Court previously indicated it preferred objecting parties to include a
14 proposed addendum to address the objection issues, the nature of the hidden iCap Trust
15 Actions makes that insufficient. Redmond Funding does not possess the knowledge of the
16 Debtors' finances to impart on the targets (known only to Debtors) the risks of the proposed
17 plan.

18 **B. Secured Creditors Are Impaired**

19 The impact of the above issue is best evidenced by the Disclosure Statement's
20 asserted treatment of secured creditors. Secured Creditors are "Class 2" under the Plan, and
21 the Disclosure Statement superficially asserts they are "unimpaired and deemed to accept the
22 plan". However, there are significant caveats to that asserted treatment, with the major one
23 being that the claims must be "Allowed". Looking at the Plan, a claim is "Allowed" only if it
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25 ¹¹ 11 U.S.C. § 1125(a)(1).

26 ¹² See *In re Diversified Inv'rs Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988).

1 is not objected to, and the objection can take place post-confirmation.¹³ Secured Creditors
2 like Redmond Funding are deemed to approve the Plan, even though the Debtors appear
3 likely to include Redmond Funding (and possibly all secured creditors) in the iCap Trust
4 Actions list. By failing to identify known and planned claims against secured creditors,
5 Debtors are avoiding objections to the “unimpaired” classification of secured claims.

6 A claim is only unimpaired if the plan “leaves unaltered the legal, equitable, and
7 contractual rights to which such claim or interest entitles the holder of such claim or
8 interest.”¹⁴ Where a plan contemplates actions challenging a class of creditors’ claims (to the
9 extent that its funding depends on those actions), the debtor should not be allowed to assert
10 an “unimpaired” treatment to avoid negative votes from those affected creditors. Redmond
11 Funding respectfully requests that the Disclosure Statement be rejected as it improperly
12 attempts to treat secured claims as unimpaired despite the fact that the Debtors intend to
13 challenge those very claims.

14 **C. The Confirmation Hearing Should Not Proceed Until Debtors Have Fully Answered**
15 **the Pending 2004 Orders.**

16 Redmond Funding has applied for and been granted two 2004 orders against the
17 Debtors VH Senior Care LLC and Colpitts Sunset LLC. As outlined in those motions,
18 Redmond Funding was compelled to move for the 2004 orders following (i) the Debtors’
19 unilateral decision not to produce the requested documents, despite previously representing
20 to the court they would quickly and informally produce discovery in order to justify a quick
21 hearing on the ponzi-scheme presumption issue (as to VH Senior Care LLC); and (ii)
22 Debtors’ late disclosure of Redmond Funding being a target of litigation related to its
23 previously satisfied loan to Colpitts Sunset, LLC. Given that Debtors are seeking to apply a
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25 ¹³ Dkt. no. 1089, pp. 2-3.

26 ¹⁴ 11 U.S.C. § 1124(1).

1 ponzi-scheme presumption to and substantive consolidation of the entities, they should not be
2 allowed to schedule a confirmation hearing until such time as all necessary discovery is
3 produced on those issues.

4 **II. CONCLUSION**

5 Redmond Funding objects to the Debtors' Motion, and respectfully requests that the
6 Court reject the Disclosure Statement as (i) it omits disclosure of the known iCap Trust
7 Actions, and (ii) it improperly classifies secured claims as unimpaired despite the fact that
8 the Debtors are already planning avoidance actions against those very claims. Redmond
9 Funding further requests that the confirmation hearing not proceed until all relevant
10 discovery is produced by the Debtors. Debtors should not be allowed to seek findings
11 detrimental to Redmond Funding without producing information needed by Redmond
12 Funding to defend against those claims.

13 DATED this 13th day of August, 2024.

14 EISENHOWER CARLSON PLLC

15
16 By: /s/Darren R. Krattli

17 Darren R. Krattli, WSBA #39128
18 Attorneys for Creditor
19 Redmond Funding Group
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1 IN THE UNITED STATES BANKRUPTCY COURT
2 IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

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4 iCAP ENTERPRISES, INC.,

5 Debtor.

PROOF OF SERVICE

6 Darren R. Krattli certifies as follows:

7 I am a resident of the State of Washington. I am over the age of 18 years and not a
8 party to the within entitled cause. I am a member of the law firm of Eisenhower Carlson
9 PLLC, whose address is 909 A Street, Suite 600, Tacoma, Washington, 98402.

10 On August 13, 2024, *all parties requesting ECF notification as of August 13, 2024* were
11 notified via ECF notification of the filing of the following:

- 12 • REDMOND FUNDING GROUP, LLC'S OBJECTION TO DEBTORS'
13 DISCLOSURE STATEMENT; and
14 • this Proof of Service.

15 I declare under the penalty of perjury under the laws of the state of Washington that
16 the foregoing is true and correct.

17 Dated at Tacoma, Washington this 13th day of August, 2024.

18 /s/ Darren R. Krattli
19 Darren R. Krattli